

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

RUBY REID,

Plaintiff,

v.

NO. 1:96CV73-S-A

GRENADA SUNBURST SYSTEM CORP.
LONG TERM DISABILITY PLAN AND
CONTINENTAL CASUALTY COMPANY,

Defendants.

OPINION

In this case, plaintiff charges that defendants improperly refused to pay long term disability benefits under an ERISA plan. Presently pending in this matter are several motions, including: (1) motion to dismiss by defendant Continental Casualty Company (CNA); (2) motions for summary judgment by both Grenada Sunburst System Corporation Long Term Disability Plan (the Plan) and CNA; and (3) motion to strike extraneous materials by CNA.¹

FACTS

The plaintiff, Ruby Reid, began working for Grenada Sunburst System Corporation in 1971. For the last five years of her employment, Reid worked as a customer service representative in the Ackerman, Mississippi, branch. In that capacity Reid performed various duties, including talking to customers, handling accounts, seeing after insurance claims, helping out in bookkeeping, loading

¹The motion to dismiss and to strike filed by Grenada Sunburst System Corporation on January 9, 1997, is moot, as that entity was voluntarily dismissed on March 31, 1997. Also, on July 10, 1997, this court granted the motion to strike jury demand and claims for extra-contractual and punitive damages by CNA.

information into a computer, and running the proof machine. These duties required typing, writing, opening heavy drawers, climbing a small stepladder, and carrying lock boxes, work trays, ledgers, large boxes of film, and bags of coins. In an eight-hour day, Reid spent six hours sitting, one hour standing, and one hour walking and bending.

As an employee of Grenada Sunburst, Reid was a participant in the Plan, which was insured by a policy of insurance issued by CNA. In pertinent part, that Plan stated:

You are considered totally disabled and eligible for total disability benefits:

During the first 24 months for which benefits are payable and during the applicable elimination period--if you are unable to perform the substantial and material duties of your regular occupation and do not engage in any other work for wage or profit for which you are or become qualified by education, training or experience;

After the first 24 months of benefit payments--if you are unable to perform the duties of any occupation for which you are or become qualified by education, training or experience.

When evaluating your qualifications for employment, the skills, responsibilities, income and degree of social acceptance of your job prior to disability are considered.

To be considered disabled, you must be under a doctor's care. Normally, your own physician determines the degree of physical impairment caused by the disabling condition. Temporary disabilities are covered as long as the definition of total disability is satisfied.

(Emphasis in original). Under the terms of the Plan, all coverage and participation ceased upon termination of employment with Grenada Sunburst or termination of the Plan.

In early 1994, Reid began experiencing physical problems and sought care from a variety of physicians, including her primary physician, Dr. Flowers, who is an internist. He in turn referred Reid to Dr. Songcharoen, a rheumatologist. Songcharoen had treated Reid in the past for arthritis, noting also the possibility of fibromyalgia. Reid conferred with Dr. Songcharoen in May and

October, 1994. When Reid saw Songcharoen in October, 1994, she received injections in her joints and underwent a muscle biopsy. Dr. Songcharoen prescribed physical therapy as treatment for Reid's condition and stated, "After beginning therapy, she may return to work again." Dr. Songcharoen also advised Reid that she did not have a serious condition.

Reid did not work after October 14 and admits that no doctor told her that she should stop working at that time. She began physical therapy the first week of November as prescribed by Dr. Songcharoen but did not attempt to return to work. Rather, she conferred again with Dr. Flowers and a second rheumatologist, Dr. Saitta. Dr. Saitta found Reid's history and symptoms consistent with fibromyalgia but did not suggest that Reid could not return to work because of her condition. Although Dr. Flowers classified Reid with a "[s]evere limitation of functional capacity" and as "incapable of minimal (sedentary) activity," he also noted that she was "not to do heavy lifting or strenuous activity; **otherwise as tolerated.**" (Emphasis added).

About the same time that Reid left work, her employer announced a merger with Union Planters Bank. Reid was offered a voluntary separation package which she initially refused. On or about November 21, Reid was advised that she could take the voluntary separation package and remain eligible for disability b-November, Reid filed her claim for long term disability under the Plan after discussing the matter with her doctors. Her claim was based on fibromyalgia and hypertension. CNA made several requests for additional information from Reid, her doctors, and her employer and on May 1, 1995, denied Reid's claim. Specifically, CNA found:

We have determined on the basis of the medical reports that the objective medical findings² and reported symptoms do not support a condition that would continuously

²CNA admitted in deposition that there is no medical test which can definitively diagnose fibromyalgia.

preclude work activity.

As far as the diagnosis of Fibromyalgia Syndrome which is provided by the treating physicians based on your account of symptoms and duration of symptoms, you may meet the criteria depending on which published standards are elected to be accepted as determinative of such a diagnosis; however, there are not any significant objective medical facts or clinical findings indicative of a physical impairment of such severity that you would be precluded from performing the duties of your occupation as a Customer Service Representative. A diagnosis and continued medical treatment do[] not constitute a basis for “disability.”³

Through counsel, Reid appealed the denial of benefits. CNA denied the appeal on October 12, 1995, stating:

As explained in our letter of May 1, 1995, the various tests performed have produced no validated objective medical information....Dr. Songcharoen in [her] October 19, 1994, report indicates “after beginning therapy, she may return to work again.”

* * *

In reviewing Dr. Flowers’ letter of June 22, 1995, we note that he reports history, care, and current symptomatology but no reference is made to a validated objective basis for disability and no clinical examinations results are reported.

The Criteria used when evaluat[ing] Fibromyalgia Syndrome is provided by a variety of sources....The standard used, as we have said above, must include validated objective medical information.

It is the decision of the Appeals Committee that, based on the information currently available, the denial of benefits as described in our letter of May 1, 1995, is correct and is upheld.

Motions for Summary Judgment

In ruling on a motion for summary judgment, the court is not to make credibility determinations, weigh evidence, or draw from the facts legitimate inferences for the movants. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Rather, the evidence of the nonmovant

³CNA also testified that it “looked at the fact that [Reid] may or may not have had a job to go back to.”

is to be believed, and all justifiable inferences are to be drawn in her favor. *Anderson*, 477 U.S. at 255. It should be pointed out, though, that if the ““evidentiary facts are not disputed, a court in a nonjury case may grant summary judgment if trial would not enhance its ability to draw inferences and conclusions.”” *In re Placid Oil Co.*, 932 F.2d 394, 398 (5th Cir. 1991) (quoting *Nunez v. Superior Oil Co.*, 572 F.2d 1119, 1124 (5th Cir. 1978)). As the *Placid* court recognized, “[I]t makes little sense to forbid the judge from drawing inferences from the evidence submitted on summary judgment when that same judge will act as the trier of fact, unless those inferences involve issues of witness credibility or disputed material facts.” *Id.*

Of crucial importance to the determination of the instant motions is the standard of review to be afforded CNA’s determination that Reid was not disabled within the meaning of the subject Plan. CNA argues that although the subject Plan is silent on the applicable standard of review, the abuse of discretion standard should govern since CNA’s decision was based entirely on a factual determination. In response, Reid maintains that “CNA’s eligibility determination is not a purely factual determination but instead involves application of the evidence to the terms of the Plan and requires interpretation of the Plan itself.” This latter contention is based on CNA’s determination that there were no “objective” evidence to support Reid’s claim of disability.

In *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101 (1989), the Court held: “[A] denial of [ERISA] benefits...is to be revi to determine eligibility for benefits or to construe the terms of the plan.” *Bruch*, 489 U.S. at 115. In *Pierre v. Connecticut General Life Insurance Co.*, 932 F.2d 1552 (5th Cir. 1991), *cert. denied*, 502 U.S. 973 (1991), the Fifth Circuit found that *Bruch* does not require de novo review for *factual determinations*, even when the plan is silent as to the administrator’s or fiduciary’s discretionary authority. Rather, the court held “that for factual

determinations under ERISA plans, the abuse of discretion standard of review is the appropriate standard; that is, federal courts owe due deference to an administrator's factual conclusions that reflect a reasonable and impartial judgment." *Pierre*, 932 F.2d at 1562.⁴ "Consequently, district courts in the Fifth Circuit review under an abuse of discretion standard a plan administrator's factual determinations and determinations made pursuant to a plan that gives the administrator discretionary authority to determine eligibility or interpret the terms of the plan." *Sweatman v. Commercial Union Insurance Co.*, 39 F.3d 594, 597 (5th Cir. 1994).

Having carefully considered the matter, the court is of the opinion that CNA's decision in this case is entitled to review under an abuse of discretion standard, as CNA made only a factual determination; the terms of the Plan were not implicated. Reid's argument that CNA "went beyond the facts to arrive at a conclusion which implicates the Plan's terms and interpretation" is not persuasive. In this court's opinion, the fact that CNA may have given lesser weight to Dr. Flowers' opinion and that it relied on the absence of "objective" evidence to reach its conclusions goes to whether CNA's decision "reflect[s] a reasonable and impartial judgment," *Pierre*, 932 F.2d at 1562, rather than whether it properly interpreted the terms of the Plan.

Having determined that CNA's decision is to be reviewed under an abuse of discretion standard, the court "must focus on the evidence that was before [CNA] when the final benefit

⁴Reid also argues that CNA should not get deferential review of its decision because it is not the Plan administrator. Reid is correct that Grenada Sunburst, not CNA, is designated in the Plan as the administrator. However, it is clear from the documents submitted that the Plan delegated to CNA all discretionary authority in the administration of the Plan, thereby making it, at the very least, a fiduciary. See 29 U.S.C. § 1002(21)(A); see also *Reich v. Lancaster*, 55 F.3d 1034, 1047-51 (5th Cir. 1995); *Pierre*, 932 F.2d at 1555, 1555 n. 1-2.

determination was made,”⁵ *Denton v. First National Bank*, 765 F.2d 1295, 1304 (5th Cir. 1985), although CNA could abuse its discretion if it failed to obtain the necessary information. *Salley v. E. I. DuPont de Nemours & Co.*, 966 F.2d 1011, 1015 (5th Cir. 1992). *See also Southern Farm Bureau Life Insurance Co. v. Moore*, 993 F.2d 98, 102 (5th Cir. 1993) (district court should evaluate administrator’s fact findings regarding eligibility of claimant on evidence before administrator); *Wildbur v. Arco Chemical Co.*, 974 F.2d 631, 639 (5th Cir. 1992) (litigant dissatisfied with administrator’s benefit determination is not “free to disregard the evidence before the administrator and relitigate in court the historical facts surrounding a claim” if parties were given opportunity to present facts to administrator). Furthermore, the standard of review is not changed by the fact that CNA provided the policy supporting the Plan. Although this creates an apparent incentive to deny benefits, the alleged conflict is weighed as a factor in determining whether there is an abuse of discretion, with the court conducting a more penetrating review the greater the suspicion of partiality. *Salley*, 966 F.2d at 1014.

To support her position, Reid basically contends that because fibromyalgia is a condition which presents itself primarily through subjective complaints of pain and discomfort, CNA abused its discretion by focusing on the lack of “validated objective medical information.” Although the wording of the appeal denial is less precise than one would expect, in making her argument, Reid fails to consider the entire contents of the original denial and the evidence presented to CNA for

⁵CNA has requested that the court strike certain materials submitted by Reid in response to the instant motion as they address matters not considered during the review process. Having carefully considered the matter, the court is of the opinion that the motion is not well taken although the court certainly will not consider any evidence which was not before CNA when it made the final appeal determination or any testimony related thereto.

consideration. The court does not read CNA's decisions to focus solely on the lack of objective evidence to support the fibromyalgia diagnoses of Drs. Flowers and Saitta. In fact, the initial denial makes it clear that the CNA gave Reid the benefit of the doubt that she "may meet the criteria as: "[T]here are not any significant objective medical facts or clinical findings indicative of a physical impairment of such severity **that you would be precluded from performing the duties of your occupation as a Customer Service Representative.** A diagnosis and continued medical treatment do[] not constitute a basis for "disability.'" (Emphasis added). And indeed that is the ultimate question--was Reid able to continue working at Grenada Sunburst after the onset of her condition? Dr. Flowers, Reid's primary physician, was the only physician who stated that Reid suffered an impairment which prevented her from doing her job. Although Reid is correct that the Plan does state that "[n]ormally, your own physician determines the degree of physical impairment caused by the disabling condition," CNA did not, in this court's opinion, abuse its discretion when it looked at the opinions of the other physicians who, upon referral from Dr. Flowers, examined and treated Reid. Songcharoen, Reid's initial treating rheumatologist, stated unequivocally that Reid could return to work after she started physical therapy. Dr. Saitta, the second rheumatologist who examined Reid, voiced no opinion on Reid's ability to return to work. And Dr. Flowers' opinion on that subject is at best equivocal. On the one hand, he states that Reid is incapable of performing even sedentary activity but, on the other hand, notes that except for heavy lifting and strenuous activity, she could perform tasks "otherwise as tolerated." Each of these doctors was one of Reid's "own physician[s]," as opposed to a doctor supplied either by Grenada Sunburst, CNA, or the Plan.⁶

⁶It is interesting to note that at the same time Reid berates CNA for not placing greater reliance on Dr. Flowers' opinion, she also criticizes CNA for not referring her claim to an outside physician for evaluation. The court can find nothing under either the Plan or the law which

In reaching its conclusion that CNA did not abuse its discretion in evaluating Reid's claim for disability, the court has been very careful only to test the "rationality of [CNA's] actions," *Denton*, 765 F.2d at 1304, and not to determine the manner in which it would have resolved the issue had it been the administrator or fiduciary. Furthermore, the court has taken into account the possible conflict of interest inherent in a situation such as that at issue here but finds that conflict of negligible importance in this instance. Therefore, after careful consideration of the evidence, the applicable case law, and the argument of counsel, the court is of the opinion that there is no genuine issue of material fact in this case and defendants are entitled to judgment as a matter of law. The motions of CNA and the Plan for summary judgment are thus well taken and are granted.

Motion to Dismiss

Before closing, the court must address one final motion. Early on in this litigation, CNA moved for dismissal or, alternatively, for partial summary judgment of any claim to benefits beyond the initial twenty-four-month regular occupation period under the disability plan at issue. That issue requires little attention in light of the court's summary judgment ruling. Reid is entitled to receive disability benefits **beyond** the regular occupation period only if she is first entitled to receive benefits **during** the regular occupation period. Because the court has found that CNA did not abuse its discretion in denying benefits during the regular occupation period, Reid is not entitled under the terms of the plan for benefits any time thereafter. CNA's motion to dismiss is therefore granted.

CONCLUSION

Having carefully considered the matter, the court is of the opinion that the motions of

mandates that persons reviewing claims must be medically trained or that in every case they must get additional opinions from other physicians.

Continental Casualty Company and Grenada Sunburst System Corporation Long Term Disability Plan are granted, as there is no genuine issue of material fact and defendants are entitled to judgment as a matter of law regarding whether CNA abused its discretion in refusing to pay plaintiff disability benefits under the Plan. Also, CNA's motion to dismiss any claim for benefits beyond the regular occupation period is granted, and finally, CNA's motion to strike is denied.

An appropriate order and final judgment shall issue.

SO ORDERED this 15th day of September, 1997.

CHIEF JUDGE